

REMARKS

Applicants respectfully request reconsideration of this Patent Application, particularly in view of the above Amendment and the following remarks. No additional fee is required for this Amendment as the number of independent claims has not changed, and the total number of claims has not changed.

Amendment to the Specification

Applicants have amended the first paragraph of 21 of the Specification to correct a typographical error. No new matter has been added to the Specification by this Preliminary Amendment.

Amendment to the Claims

Applicants have amended Claim 1-56 to recite absorbent articles. Applicants have amended independent Claim 97 to depend from amended Claim 1. Claims 38, 60-62, and 65-66 have been amended to correct typographical errors. No new matter has been added to the claims by this Preliminary Amendment.

Oral Election

The Examiner indicates on page 5 of the Office Action that a telephone call was made to Melanie Rauch on 07 June 2004 to request an oral election, but that an election was not made. Applicants note that the undersigned made an oral election for the subject patent application at Examiner Kidwell's request on 21 August 2003. At that time, the Examiner required election only between Claims 1-96 and Claims 97-116. The undersigned made an oral election of Claims 1-96.

Election/Restrictions

The Examiner has now required restriction to one of the following alleged inventions:

- I. Claims 1-56, drawn to a surge composite;
- II. Claims 57-96, drawn to an absorbent article comprising a surge material; and
- III. Claims 97-116, drawn to a method of applying superabsorbent material to surge material.

Applicants hereby elect, with traverse, Group II for prosecution on the merits. Applicants have amended Claims 1-56 to recite absorbent articles. The absorbent article of amended independent Claim 1 comprises a surge composite including a surge material. Thus, Applicants respectfully assert that amended Claims

1-56 are properly classified in Group I. Applicants have also amended Claim 97 to depend from amended Claim 1. Thus, Applicants respectfully assert that dependent Claims 97-116 are properly classified in Group I. While Applicants believe all claims should now be prosecuted on the merits, Applicants reserve the right to proceed with prosecution of claims directed to the subject matter of Groups I and III in one or more divisional patent applications.

The Examiner has further alleged the subject patent application contains multiple patentably distinct species of the claimed invention, identified as follows:

Species 1 - Figure 1;
Species 2 - Figure 2;
Species 3 - Figures 3A, 3B;
Species 4 - Figure 4;
Species 5 - Figure 5;
Species 6 - Figure 6;
Species 7 - Figure 10;
Species 8 - Figure 11; and
Species 9 - Figures 12-15.

The Examiner further states that no claim is generic.

Applicants disagree with the Examiner's identified of species. In addition, Applicants assert that at least amended independent Claim 1 and original independent Claim 57 are generic.

Applicants note that FIG. 1 illustrates an absorbent article with a surge material layer, while FIG. 2 illustrates an absorbent article with a surge material layer

and an additional absorbent core layer. Applicants respectfully assert that FIG. 1 and independent Claims 1 and 57 are generic to FIG. 2, independent Claim 88, and all dependent claims.

FIG. 4 is a sectional view of the surge material layer shown in FIG. 3A, and thus cannot be a different species from FIGS. 3A and 3B. FIG. 5 is a photograph of a particular example of a discrete region of the invention, such as is present in FIGS. 1, 2, 3A-B, and 4, using a scanning electron microscope. Applicants assert that FIG. 5 relates to the species of surge material shown, for example, in FIGS 3A-B. FIG. 6 is a photograph of a surge material having a discrete region extending through the entire thickness; a characteristic of the surge material illustrated in FIG. 4. Thus, Applicants assert FIG. 6 does not show a different species from FIGS 3A-B and 4. FIGS. 10 and 11 are additional magnified photographs of discrete regions showing the general structure of superabsorbent material and the fibers as it would generally be in any discrete region of the invention.

FIGS. 12-15 illustrate generally ring-shaped discrete regions, which represent a different discrete region configuration than illustrated in FIGS. 3A-B, 4, and 6-9. However, Applicants assert that at least independent Claims 1, 57, and 88 are generic to the ring-shaped discrete regions shown in FIGS. 12-15.

Applicants have elected, with traverse, claims in Group II for prosecution on the merits. FIGS. 1 and 2 show absorbent articles of this invention, while FIGS. 2, 3A-B, and 4-16 illustrate surge layers, surge materials, and/or surge composites for use in the absorbent articles of Group II, such as, for example, the absorbent articles of FIGS. 1 and 2.

Applicants hereby elect, with traverse, the alleged species of FIG.1 for prosecution. However, Applicants request the Examiner to reconsider the identification of species, particularly as Applicants assert FIG. 1 is generic. Applicants assert that Claims 1-87 and 97-116 are readable on FIG. 1.

Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,



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